

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH - CENTRAL DIVISION

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

FEB 17 2010

JERI RICE,

Plaintiff,

v.

DEER CREST JANNA, LLC, DEER CREST
MASTER ASSOCIATION, INC., MICHAEL
ZACCARO, GREGSON PERRY, LYNDIA
FETTER, ROBERT SAMMONS and
THOMAS HODGSON,

Defendants.

D. MARK JONES, CLERK
BY _____
DEPUTY CLERK

ORDER

Case No. 2:09-cv-560

Judge Dee Benson

Pending before the court is defendants Deer Crest Janna, LLC, and Michael Zaccaro's application for attorneys' fees incurred in connection with defendants' motion to remove *lis pendens*. (See Dkt. No. 55). Having considered the law and facts surrounding the application, the court issues the following Order.

Given the somewhat ambiguous state of the law in Utah (*see e.g., Timm v. Dewsnap*, 921 P.2d 1381 (Utah 1996); *Gardner v. Perry City*, 2000 UT App 1, 994 P.2d 811), I find that Ms. Rice had a rational basis for believing that under Utah law she was allowed to file a *lis pendens* against the defendants' parcels. Although I do not think this makes her filing "substantially justified," I do find that under all of the circumstances it would be unjust to require her to pay the defendants' attorneys' fees and costs.

Therefore, the court DENIES defendants' application for attorneys' fees. Each party is to bear its own costs and fees.

IT IS SO ORDERED.

DATED this 16th day of February.

A handwritten signature in cursive script that reads "Dee Benson". The signature is written in dark ink and is positioned above a horizontal line.

Dee Benson
United States District Judge